

16. CHARTER BUS

BASIC REQUIREMENT

FTA grantees are prohibited from using federally funded equipment and facilities to provide charter service except on an incidental basis and when one or more of applicable exceptions for urban areas set forth in the charter service regulation at 49 CFR 604.9 (b) applies.

AREAS TO BE EXAMINED

1. *Charter Service Operation*
 - a. Annual public notice
 - b. Exceptions
2. *Proof that Charter Service is Incidental*
3. *Complaints*
4. *Use of Locally Owned Vehicles*

REFERENCES

1. 49 CFR Part 604, "Charter Service."
2. Federal Register, Volume 2, No. 212 "Charter Service Questions and Answers".

QUESTIONS FOR THE REVIEW

1. Does the grantee or its subrecipients, contractors, or lessees operate any charter service?

2. If yes, has the grantee annually determined if there are any private charter operators willing and able to provide that service?

3. If yes, did the process follow the regulatory requirements?

4. Under what exception is the charter service operated?

a. No willing and able private charter operators.

b. Entering into a contract with a private charter operator to provide equipment or service if the private operator has a request for service that exceeds its capacity or requires accessible equipment.

If yes, does the grantee have documentation of the contract?

c. Special Events

If yes, was this exception approved by FTA?

d. Contract with a government entity or private, non-profit organization providing service to persons with disabilities or eligible to receive public assistance.

If yes, did the grantee obtain the required certifications from the sponsoring organization?

e. Formal agreement executed between the grantee and all private operators determined to be willing and able.

If yes,

i. Does the formal agreement specifically allow the grantee to provide the particular type of charter?

ii. Did the grantee provide for this type of agreement in its annual public charter notice or publish a separate notice of the agreement?

iii. Are all willing and able private operators party to the agreement?

EXPLANATION

As defined in the regulations, charter service means "transportation using buses or vans, or facilities funded under The Act of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the vehicle or service, have acquired the exclusive use of the vehicle service to travel together under an itinerary either specified in advance or modified after having left the place of origin." All use must be "incidental," meaning charter service that does not interfere with or detract from the provision of transit service.

Any grantee that wishes to provide any charter service using FTA equipment or facilities must first determine if there is at least one private charter operator willing and able to provide the charter service that the grantee wishes to provide. The regulations detail the procedural requirements for this determination. The process must, at a minimum, include:

- Placing a notice in a newspaper of general circulation within the proposed geographic charter service area
- Sending a copy of the notice to all private charter service operators in the proposed geographic charter service area and to any private operators that request the notice
- Sending a copy of the notice to the United Bus Owners of America and the American Bus Association

- Describing the charter service that the grantee wishes to provide limited to the days, times of day, geographic area, and categories of revenue vehicles, but not the capacity or the duration of the charter service.

Only two categories of vehicles can be specified: buses and vans. A bus is a bus whether it is an intercity bus, a transit bus, or a replica trolley. A private operator does not have to demonstrate that it has any particular type of bus to be considered "able."

FTA does allow grantees to describe the services they wish to provide in terms of trip purposes or certain groups (e.g., Boy Scouts to the ball game). To the extent that such descriptions allow private operators to decide whether they desire to perform a certain trip, they are useful to the "willing and able" determination process. Note, however, that the private operator need only express in writing its desire to perform charter service generally in the service area specified by the transit agency. A private operator is considered "willing" even if it refuses to provide charter service to some customers in the affected area.

The notice must instruct any operator who wishes to be considered willing and able to submit a statement of its desire and capability to provide the proposed service and proof of its legal authority. Any evidence submitted must be reviewed within 30 days. Within 60 days, the grantee must notify each private charter operator who submitted evidence of the results of the review.

To the extent that there is at least one willing and able private operator, the grantee is prohibited from providing charter service unless one or more of the following exceptions apply. (Two of the exceptions in the regulations apply to non-urbanized areas and are not listed below.)

- A grantee may provide any and all charter service if there are no willing and able private operators.
- A grantee may enter into a contract with a private charter operator to provide equipment or service if the private operator has a request for service that exceeds its capacity or requires accessible equipment.

Under this exception, the grantee provides service under contract to the private operator, who is responsible for the direction and control of the grantee's vehicles while the service is being provided. The grantee does not contract directly with the public for the service. The grantee must have documentation of the contract with the private operator for the use of the equipment.

- A grantee may operate charter service for special events. This exception requires the grantee to submit its petition to the FTA Administrator at least 90 days prior to the event. The petition must describe the event, explain how it is special, and explain the amount of charter service that private operators are not capable of providing. The Administrator will issue a written decision denying or granting the request in whole or in part.
- A grantee may provide service to government entities or non-profit agencies serving persons with disabilities or persons receiving public welfare funds. The contracting entity must provide a certification as specified in the regulations, which attests to the non-profit nature of the agency, identifies the passengers, declares that the requested charter trip is consistent with the function of the organization, and is consistent with Title VI of the Civil Rights Act of 1964.
- A grantee may provide charter service directly to a customer if it executes a formal agreement with all private operators it has determined to be willing and able. The agreement must specifically allow the grantee to provide the particular type of charter service defined. The grantee's annual public charter notice must provide for this type of agreement or must be amended to refer to the agreement before the grantee undertakes the charter trips the agreement describes. The grantee and the private operators may define the excepted charter service in any agreed-to terms and conditions.

An annual charter notice is required if a grantee operates charter service because no willing and able operator is identified or with a formal agreement. When providing charter service under the other three exceptions (non-profit, special event, or contract with private operator to satisfy a capacity need), an annual notice process is not necessary.

Some grantees have provided a substantial amount of incidental charter service with replica trolley vehicles, often in violation of the regulatory exceptions, based on a misunderstanding of FTA's definition of categories of vehicles. As noted above, the regulations recognize only two categories of vehicles: buses and vans. Rubber-tired replica trolleys, articulated buses, double decker buses, and other types of specifically modified equipment are all buses and are subject to the same rules as transit buses. If a charter customer insists on a particular type of equipment that the willing and able private operator does not have and the grantee does, the grantee still may not provide charter service with that equipment directly to the customer. If a customer wants a replica trolley bus and the private operator does not own one, the grantee cannot claim that there is no willing and

able provider of trolleys. The "no willing and able" exception applies only if there are no willing and able operators with buses of any kind for charter service.

Further, the grantee cannot lease the trolley to a private operator and claim that the charter service is allowed under the exceptions unless the private operator has exhausted its supply of buses. The intent of the second exception is to satisfy a genuine capacity need for buses in general or a need for accessible equipment. "Specialized" equipment in this case does not refer to replica trolley buses or other modified buses. This exception does not recognize specific categories of buses.

REASON FOR THE QUESTION

49 CFR 604.9 (a)-(d).

Question 25 in FR Notice 11/3/87, page 42252, and Questions 46-47, page 42255.

SOURCES OF INFORMATION

Discuss at the site visit the grantee's procedures for operating charter under any of the allowed exceptions. Review copies of published notices, letters to or from private charter operators, the results of the grantee's review of evidence, correspondence regarding special events, procedures for obtaining the required certifications from non-profit agencies, copies of formal agreements with private operators, and charter logs maintained by the grantee. Pull-out logs or charter logs can provide information on bus use, especially to document that charter service is incidental.

DETERMINATION/DEFICIENCY CODE

If the grantee operates charter service, it is not deficient if it has properly completed the willing and able determination process, it operates charter service under the exceptions, and it has proper documentation of its procedures. If the grantee provides charter service without documentation of a qualified exception, or inconsistent with the specific provisions of one of the exceptions, it is deficient (**DEFICIENCY CODE 01**: Inadequate process for determining willing and able private operators and/or **DEFICIENCY CODE 02**: Charter service operated outside of allowed exceptions).

SUGGESTED CORRECTIVE ACTION

The grantee must confirm to FTA its intent to comply with the charter regulations in the future. The grantee must immediately cease the provision of illegal charter service.

Should the grantee wish to provide charter service, it will need to identify the exception under which it will provide the service and provide documentation to FTA confirming that it has followed the specific requirements of the charter bus regulations.

5. *Is all charter service incidental, i.e., service that does not interfere with or detract from the provision of mass transportation service, does not shorten the mass transit life of the equipment or facilities, and recovers fully allocated costs?*
6. *Does documentation show that mileage and/or hours are recorded and subtracted from the useful life of the equipment used in charter service?*

EXPLANATION

Any charter service that a recipient provides under any of the allowed exceptions must be incidental charter service. Incidental charter service does not interfere with or detract from providing mass transportation service or does not shorten the mass transportation life of the equipment being used. The grantee must have documentation to demonstrate that mileage and/or hours are recorded and subtracted from the useful life of the equipment. Any reasonable method of calculation is sufficient. The calculation does not necessarily have to be done for each particular bus; averages can be applied to the entire fleet. The fully allocated cost must be recovered from the charter revenue. Note that as a general rule, free charter service is not incidental. However, FTA will consider certain types of free charter service to be incidental (e.g., free service to an economically disadvantaged group when there is no private operator willing and able to provide the service).

REASON FOR THE QUESTION

49 CFR 604.9(e)

Question 24 in FR Notice 11/3/87, page 42251.

SOURCES OF INFORMATION

Charter logs and procedures and financial records provided by the grantee are sources of information, as well as tariffs showing charter rates.

DETERMINATION/DEFICIENCY CODE

The grantee is not deficient if it has adequate records to demonstrate that all charter operations are incidental. Corrective action may be required if the grantee's record keeping procedures need to be improved. The grantee is deficient if it is unable to demonstrate that charter service is incidental to mass transit service (**DEFICIENCY CODE 03**: Charter service not incidental). If the grantee's charter service impacts the service life of vehicles and the grantee does not account for such service in its calculation of vehicle life, the grantee is deficient (**DEFICIENCY**

CODE 04: Insufficient documentation of effect on service life).

SUGGESTED CORRECTIVE ACTION

The grantee must cease charter service that is not incidental. It must certify its understanding of and intent to comply with the charter regulations. Procedures for documenting charter use and subtracting mileage or hours from vehicle service life should be submitted to FTA.

7. *Have any complaints been filed alleging that the grantee is operating charters in violation of the regulations?*

EXPLANATION

Any interested party who believes that a grantee is in violation of the charter regulations may submit a written complaint to FTA. The regulations specify how complaints will be processed. If FTA determines that a charter violation has occurred, appropriate remedies may be ordered.

REASON FOR THE QUESTION

Information

SOURCES OF INFORMATION

Review documentation available in the regional office files and provided by the grantee.

DETERMINATION/DEFICIENCY CODE

The grantee is not deficient if no complaints have been received, or if the grantee is operating in accord with any orders resulting from a complaint determination. The grantee is deficient if a violation has not been remedied as ordered by FTA (**DEFICIENCY CODE:** Use the deficiency code that reflects the basis of the original complaint).

SUGGESTED CORRECTIVE ACTION

The grantee must immediately implement remedies as directed and report to FTA when pending complaints are resolved.

8. *Does the grantee provide charter service with locally owned vehicles? Are the vehicles stored and maintained in an FTA facility?*

EXPLANATION

Charter may be provided with locally owned equipment if the grantee creates a separate company operated exclusively with local funds or if it keeps its charter accounts completely separate from its mass transit division.

REASON FOR THE QUESTION

49 CFR 604.9(a)

Question 26 in FR 11/3/87, Page 42252

SOURCES OF INFORMATION

Information may be obtained through discussions and documentation provided by the grantee and through observation during the facility inspection.

DETERMINATION/DEFICIENCY CODE

The grantee is not deficient if it can be documented that any charter service provided with locally owned vehicles is physically and financially independent from and receives no benefits from the grantee's provision of mass transit. If the grantee has separate systems, but improved measures are required, or if charter service uses FTA-funded equipment or facilities, the grantee is deficient (**DEFICIENCY CODE 05:** Use of FTA-funded facilities for locally owned charter vehicles).

SUGGESTED CORRECTIVE ACTION

All charter operations must immediately cease until procedures are in place to keep locally funded charter distinct from mass transit. Documentation is to be submitted to FTA.

TRIENNIAL REVIEW WORKSHEET

16. CHARTER BUS

Basic Requirement: FTA grantees are prohibited from using federally funded equipment and facilities to provide charter service except on an incidental basis and when one or more of applicable exceptions for urban areas set forth in the charter service regulation at 49 CFR Section 604.9 (b) applies.

Findings: No Deficiencies ☐ Deficient ☐ List Codes: _____

Deficiency Codes:

- | | |
|--|--|
| 00—None | 03—Charter service not incidental |
| 01—Inadequate process for determining willing and able private operators | 04—Insufficient documentation of effect on useful life |
| 02—Charter service operated outside of allowed exceptions | 05—Use of FTA-funded facilities for locally owned charter vehicles |
| | 99—Other |

Review Questions	Comments
<p>1. Does the grantee or its subrecipients, contractors, or lessees operate any charter service?</p> <p style="text-align: center;">Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
<p>2. If yes, has the grantee annually determined if there are any private charter operators willing and able to provide that service?</p> <p style="text-align: center;">Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
<p>3. If yes, did the process follow the regulatory requirements?</p> <p style="text-align: center;">Yes <input type="checkbox"/> No <input type="checkbox"/></p>	

Review Questions	Comments
<p>4. Under what exception is the charter service operated?</p> <p>a. No willing or able operator</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>b. Entering into a contract with a private operator to provide equipment or service if the private operator has a request for service that</p> <p>1) exceeds its capacity, or 2) requires accessible equipment</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, does the grantee have documentation of the contract?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>c. Special Events</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, was this exception approved by FTA?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>d. Contract with a governmental entity providing service to persons with disabilities or private, non-profit organizations eligible to receive public assistance funds.</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, did the grantee obtain the required certifications from the sponsoring organization?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	

Review Questions	Comments
<p>e. Formal agreement executed between the grantee and all private operators determined to be willing and able.</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes,</p> <p>1. Does the formal agreement specifically allow the grantee to provide the particular type of charter?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>2. Did the grantee provide for this type of agreement in its annual public charter notice or publish a separate notice of the agreement?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>3. Are all willing and able private operators party to the agreement?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
<p>5. Is all charter service incidental, i.e., service that does not interfere with or detract from the provision of mass transportation service, does not shorten the mass transit life of the equipment or facilities, and recovers fully allocated cost?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
<p>6. Does documentation show that mileage and/or hours are recorded and subtracted from the useful life of the equipment used in charter service?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
<p>7. Have any complaints been filed alleging that the grantee is operating charters in violation of the regulations?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	

Review Questions	Comments
<p>8. Does the grantee provide charter service with locally owned vehicles?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Are the vehicles stored and maintained in an FTA facility?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	